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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re G.K. et al., Persons Coming  
Under the Juvenile Court Law.

C037860

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos.  
212316, 212317, 212318)

Plaintiff and Respondent,

v.

J.K. et al.,

Defendants and Appellants.

In re T.K., a Person Coming Under  
the Juvenile Court Law.

C037960

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. 212319)

Plaintiff and Respondent,

v.

J.K. et al.,

Defendants and Appellants.

The mother and father of G., K., S., and T. (the minors) appeal from the orders made by the juvenile court at the Welfare and Institutions Code section 366.26 hearing. (Welf. & Inst. Code, § 395.)<sup>1</sup> The parents contend they established an exception to adoption as to G., K., and S. The parents further contend the juvenile court erred in reducing their visitation with T. when a permanent plan of long-term foster care was ordered for him. Finally, the mother contends the juvenile court erred in denying her request for a continuance during the section 366.26 hearing. We shall affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Dependency petitions were filed in October 1998 concerning one-year-old twins G. and K., two-year-old S., and four-and-one-half-year-old T., alleging the parents had substance abuse problems and had failed to enter drug rehabilitation or otherwise comply with an informal supervision contract. According to the allegations in the petition, the parents had not drug tested as often as directed and had submitted positive tests for methamphetamine and marijuana. The petition further alleged that K. had been left unattended in a swing chair, which fell and trapped him, causing him to turn "blue and pale from lack of air" and to suffer a three-inch abrasion on his forehead.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

In December 1998 the petitions were sustained and reunification services were ordered.

According to the social worker's report for the six-month review hearing, the parents had been very inconsistent in complying with their case plans. Both parents had missed numerous drug tests and the mother had submitted several positive tests for marijuana and alcohol. The report noted that both S. and T. appeared to be bonded with the parents.

At the six-month review hearing, the juvenile court ordered further reunification services.

By the 12-month review, the mother was in partial compliance with her case plan, while the father had not complied with any aspect of his plan. The father explained that his problems complying with the plan were due to his "intense work schedule" as a carpet installer. The social worker had received a report that the parents were using a friend's urine for their drug tests. The mother tested positive for methamphetamine and, on one occasion, left the testing facility when informed her test would be supervised. The mother was visiting the minors daily, while the father visited approximately twice a month.

G. and K. had been placed in a "fost-adopt" home in January 2000 and had bonded with the foster parent. G. was angry during visits with his parents and had difficulty eating and sleeping afterward. He refused to interact with his father and appeared to be withdrawing emotionally from his mother. K. exhibited emotional problems during the visits. He would not allow his

mother to touch him. The foster family social worker reported that K. did not appear bonded to either parent.

S. had been placed with T. in a foster home and had made a positive adjustment to the home. T. had also made a positive adjustment to the home and wanted to remain in the placement if he could not return to his parents.

The 12-month review was continued a number of times and finally proceeded as an 18-month review in May 2000. The court terminated reunification services and set a hearing pursuant to section 366.26.

According to the report for the section 366.26 hearing, the parents missed several visits with S. and T. and the minors "were distraught over the let down." The parents acknowledged it was difficult for them to visit once a week, and visits were reduced to every other week. The minors were reportedly all in good health, and developmentally and academically "on target." Pursuant to the social worker's request, the juvenile court ordered bonding assessments for all four minors and continued the matters to allow additional time to assess the likelihood of adoption if parental rights were terminated.

The bonding assessments, conducted by Jeffrey Miller, Ph.D., found that G. and K. had developed a strong attachment to their foster mother and were able to separate from the parents without any "significant emotional upset." Dr. Miller concluded that G. and K. "would probably not suffer any significant emotional detriment" if parental rights were terminated.

Dr. Miller found that T. and S. had a closer relationship and stronger attachment to the parents but had also begun to develop an attachment to their foster parents. He observed that T. was experiencing "strong loyalty conflicts." Dr. Miller opined: "While it would be in [T.'s] and [S.'s] best interests to severe [sic] the parental rights and allow the foster parents to adopt the minors, an abrupt cessation of all contacts between the minors and the biological parents at this time would probably [be] detrimental to their emotional stability, especially [T.'s]." Dr. Miller recommended a reduction of visitation to once a month, accompanied by therapy to monitor the effect of the reduced visitation. He recommended that S.'s and T.'s status be reviewed in three months to determine whether parental rights should be terminated.

In a supplemental report, the social worker reported that subsequent to the bonding assessment and reduced visitation, T. had told his foster parents he wanted to remain in their home. The foster parents, who had been reticent to pursue adoption because of T.'s bond with his parents, were willing to proceed with the adoption of both minors. The social worker recommended termination of parental rights as to all four minors, pointing out that "[a]lthough the eventual cessation of visits may be difficult for the children, nevertheless the continuing intensity of contact with their parents is also difficult . . . ."

The section 366.26 hearing occurred in February 2001. The social worker testified she had assessed G. and K. and

determined they were generally adoptable. Furthermore, G. and K. were in a foster-adopt home that was likely to pass a home study.

The social worker was not certain whether S. and T. were generally adoptable but felt they were "specifically adoptable" in that there was a "viable family" with whom they had a significant attachment that was willing to adopt them. She believed continued contact with the parents would be detrimental for S. and T. because it was interfering with their ability "to settle down in the home that they're in and to form positive attachments." Despite Dr. Miller's report, the social worker recommended a permanent plan of adoption for S. and T. because the minors were attached to their foster parents and the social worker felt that "permanence may outweigh the attachment to the parents."

The father testified he worked out of town and had missed some visits as a result. According to the father, the minors always indicated they did not want visits to end. In the preceding months, the father had noticed that G. and K. had become more attached to their foster mother and it was easier for them to separate from the parents at the end of visits.

The mother testified that the minors were happy to see them at visits and, when the visits were over, they said they wanted to come home. According to the mother, G. and K. were very stable in their foster home and it would not be good for them to be removed from this placement. The mother agreed with Dr. Miller's recommendations regarding G. and K. but did not

agree with his recommendations regarding S. and T. She felt adoption would be emotionally damaging for S. and T.

Dr. Miller testified that the need for permanency outweighed any benefit G. and K. would derive from a continuing relationship with the parents. He reiterated his findings that, although the minors seemed to enjoy being with the parents, they did not have a strong attachment to them and would not suffer any emotional detriment if parental rights were terminated.

Similarly, Dr. Miller testified that although S. had an attachment to her parents, the benefit to her of having a permanent home would outweigh the benefit of continued contact with her parents. He believed S. would probably not suffer any detriment if her contact with the parents was terminated. He felt more time should be spent with her in therapy to explore this issue. Dr. Miller testified that his primary concern regarding terminating visits was with T. and his parallel recommendations as to S. were made, in part, because she shared a placement with T.

Dr. Miller felt that T. had a significant positive relationship with both parents. He testified that it can be detrimental to a child to maintain visitation with a parent with whom the child cannot reunify because this can create a conflict in the child's loyalties, causing the child to feel "emotionally pulled apart," with resultant anger and depression. According to Dr. Miller, T. was experiencing "strong loyalty conflicts," which was not healthy for a child his age. Dr. Miller believed this situation was causing distress for T. and needed to be

resolved. He also felt the conflict could prevent T. from developing a primary stable relationship with parental figures. Dr. Miller testified that terminating T.'s relationship with his parents "would resolve the loyalty conflicts and would make him more emotionally stable overall on a long-term basis . . . ." Although Dr. Miller did not feel "at this point we can sever the visits entirely," he believed it would be in T.'s best interests to "move towards termination of parental rights."

Following testimony, an "offer of proof" was made that the social worker was changing her recommendation as to T. and S., and was requesting that their cases be continued for 90 days to be reassessed after a reduction in visitation. The parents did not agree to the requested continuance.

The juvenile court took the matters under submission and, by written order, terminated parental rights as to S., G., and K., ordering a permanent plan of adoption for them. The court ordered a plan of long-term foster care for T., with implementation of Dr. Miller's recommendations for visitation.

## **DISCUSSION**

### **I**

Appellants contend the juvenile court erred by failing to find an exception to the statutory preference for adoption with regard to G., K., and S. We disagree.

"At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . The permanent plan preferred by the Legislature is adoption.



[Citation.]'" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368, italics omitted.)

Under section 366.26, subdivision (c)(1)(A), if the court finds by clear and convincing evidence that a minor is likely to be adopted, the court must terminate parental rights and order the minor placed for adoption unless the court determines that termination would be detrimental to the minor because "[t]he parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The parent has the burden of establishing an exception to termination of parental rights. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373.)

"[A] parent may not claim entitlement to the exception provided by subdivision (c)(1)(A) simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.) The benefit to the child must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the

preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

"Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.)

The juvenile court's ruling declining to find an exception to termination of parental rights must be affirmed if it is supported by substantial evidence. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576; *In re Zachary G., supra*, 77 Cal.App.4th at p. 809; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827; cf. *In re Jasmine D., supra*, 78 Cal.App.4th at p. 1342 [applying abuse of discretion standard].) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576.)

With these principles in mind, we turn to the present case. In order to establish the exception to adoption set forth in section 366.26, subdivision (c)(1)(A), the parents were required to establish that they had maintained regular visitation and contact with the minors and that the benefit the minors derived

from the relationship outweighed the strong preference for adoption. The parents failed to meet this burden.

Initially, we note the father's visitation with the minors was insufficient to establish the exception to adoption. He only visited the minors approximately twice a month throughout the reunification period.

Even assuming the father's visitation was adequate, the parents failed to establish that the minors derived sufficient benefit from the relationship with them to outweigh the preference for adoption. Both G. and K. experienced behavioral and emotional problems attendant to visits with the parents. Dr. Miller's assessment found that neither minor was likely to suffer any significant detriment if parental rights were terminated. Even the mother testified she agreed with Dr. Miller's recommendation of adoption for G. and K. The parents presented no evidence at the section 366.26 hearing to support a finding that the benefit to G. and K. of maintaining a relationship with them outweighed the preference for adoption. It is beyond dispute that the exception to adoption did not apply to them.

Regarding S., Dr. Miller testified that the benefit to her of a permanent home outweighed any benefit from continued contact with her parents. He believed she would probably not suffer any detriment if parental rights were terminated. He explained that his recommendation that S. continue to have contact with the parents was based primarily on the fact that she shared a placement with T., who he felt needed to have

continued contact with the parents. Thus, although Dr. Miller did not believe S. would suffer significant emotional detriment if parental rights were terminated, he recommended that therapy be initiated to explore this issue further before terminating contact.

The parents do not contest that G., K., and S. were adoptable. As previously noted, since the minors were adoptable, the parents had the burden to establish that a statutory exception to adoption applied. The juvenile court was required to give priority to the minors' interests in stability and permanence unless the court found they would be greatly harmed by termination of their relationships with the parents. Substantial evidence supports the juvenile court's conclusion that the benefit to the minors of maintaining the relationships with the parents was not sufficient to overcome the preference for adoption.

## II

The parents argue it was error for the juvenile court to reduce their visitation with T. to once a month. We do not agree.

When long-term foster care is selected as the permanent plan, the juvenile court is required to order visitation with the parents "unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child." (§ 366.26, subd. (c)(4).)

The juvenile court is accorded broad discretion in visitation matters. On appeal, absent a showing of a clear abuse of discretion, the reviewing court will not interfere with the exercise of that discretion. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953.)

Here, there was no abuse of discretion. The evidence before the juvenile court supported a finding that T.'s visits with his parents were detrimental to him. According to Dr. Miller, the visits were creating a loyalty conflict for T. Dr. Miller testified that this type of conflict makes a child feel "emotionally pulled apart," resulting in anger and depression, and was distressing for T. Dr. Miller believed the conflict might be resolved by reducing visits.

Furthermore, Dr. Miller testified that the conflict was preventing T. from stabilizing in his placement. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation] . . . ." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; accord, *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The paramount objectives in fashioning orders for T. at this stage of the proceedings were permanence and stability. In order to promote these objectives, it was necessary to reduce the conflict T. was experiencing. Dr. Miller's testimony supported reducing visitation to accomplish this. Thus, the juvenile court did not abuse its discretion by reducing visitation.

### III

The mother argues it was an abuse of discretion for the juvenile court to deny her request for a continuance during the section 366.26 hearing. Again, we disagree.

The section 366.26 hearing occurred on three separate days over a two-week period. On the second day, the mother's attorney advised the court that the mother was ill. According to the mother's attorney, the mother first contacted her two days earlier regarding her illness. The attorney did not know whether the mother was seeking medical attention and provided no specifics concerning her illness. The juvenile court acknowledged that illness can provide good cause for a continuance but saw "as an overriding obligation to each of the four children the need to press on with their respective cases even though their parents may be absent." Noting that an expert witness was scheduled to testify that day, the court denied the continuance, finding it would be contrary to the minors' best interests. Noting that the parents were represented by counsel, the court ordered a transcript of the testimony be made available to counsel for the parents.

Section 352 is the primary statute governing continuances in dependency cases. Subdivision (a) of section 352 states in part: "Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor.

In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. . . . [¶] In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance."

In determining whether to grant a continuance, the juvenile court is accorded broad discretion. (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1186-1187.) "Continuances are discouraged [citation] and we reverse an order denying a continuance only on a showing of an abuse of discretion [citation]." (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811.)

Here, the juvenile court did not abuse its discretion. First and foremost in the determination of whether a continuance should be granted is whether it is contrary to the minor's best interests. Dependency proceedings had been initiated over two years earlier and the juvenile court found that further delay would not be in the minors' best interests.

Additionally, counsel failed to file a written notice two days in advance that she would be seeking a continuance, which is required by section 352, and she did not provide any specific information in her oral motion to establish good cause for a continuance. No medical documentation or written verification of the mother's illness was presented to the court and no specifics about her illness were provided that might indicate she was physically unable to be present.

Furthermore, the court took steps to protect the mother's due process rights in her absence: She was represented by counsel, a transcript of the testimony was made available after the hearing, and the mother testified at the next scheduled date, allowing her the opportunity to rebut any of the testimony that was given in her absence.

We conclude that, on the record before it, the juvenile court acted well within its discretion in denying the mother's request to continue the section 366.26 hearing. (*In re Gerald J.*, *supra*, 1 Cal.App.4th at p. 1187.) There was no abuse of discretion.

#### **DISPOSITION**

The orders of the juvenile court are affirmed.

We concur: RAYE, J.

DAVIS, Acting P.J.

CALLAHAN, J.